

IN THE COURT OF APPEALS OF TENNESSEE

AT KNOXVILLE

FILED
November 24, 1998
Cecil Crowson, Jr.
Appellate Court
Clerk

CITY OF CHATTANOOGA,
CV-00105

) C/A NO. 03A01-9803-

Petitioner-Appellee,

)
) HAMILTON CIRCUIT

v.

)
) HON. ROBERT M. SUMMITT,
) JUDGE

J. KENNETH AND ALIESE HUTSELL,)

) AFFIRMED AND
) REMANDED

Respondents-Appellants.

DOUGLAS M. COX, City Attorney's Office, Chattanooga, for Petitioner-Appellee.

CATHERINE M. WHITE, Chattanooga, for Respondents-Appellants.

OPINION

Franks, J.

In this condemnation action, the issue on appeal is whether the Trial Judge abused his discretion in refusing the request of landowner's attorney that the exhibits in evidence be supplied to the jury during its deliberation.

As we understand appellant's argument, the judge's refusal amounted to an abuse of discretion, because after the jury returned its verdict of \$130,000.00, the Court invited questions and the jury foreman said, "I was curious. Why aren't all the items that are put into evidence automatically brought into the jury room?" The Judge gave a general answer without any specificity to this case.

Appellant further argues that this jury "split the difference" between the two appraisals, and since it did not have the exhibits "was at a loss as to really what to

do without the appraisals to look at, so they just split the difference between the two appraisals”.

Tennessee Code Annotated §20-9-510 states that the “Trial Judge in civil cases, may, in the Judge’s discretion, on motion of either party, upon the Judge’s own motion, or on request by the jury, submit all exhibits admitted in evidence to the jury for the jury’s consideration during deliberations on the jury’s verdict.” “This statute does not impose upon a trial judge in a civil case the absolute duty of submitting the exhibits to the jury during deliberation. Rather, the matter is discretionary with the Trial Judge”. *Fletcher v. Coffee County Farmers Co-Op*, 618 S.W.2d 490, 495 (Tenn. App. 1981). The Court noted in *Fletcher*, that submitting written evidence to the jury may give one party an “unfair advantage” over the other, because the jury is likely to give the writings more “probative force” than its recollection of the oral testimony. *Accord Newsom v. Markus*, 588 S.W.2d 883, 888 (Tenn. App. 1979).

We find no evidence of abuse of discretion on the record before us. The grounds alleged by the appellants do not establish a basis to set aside the judgment. After the verdict and polling of the jury, the Trial Judge asked the jurors if they had any questions about procedure, “not about this case in particular, but about anything about your courthouses that you would like to ask about”. The question by the jury foreman in no way demonstrates that the jury did not properly perform its function.

The amount of just compensation is a question of fact for the jury to determine, *Shook & Fletcher Supply Co. V. City of Nashville*, 47 Tenn. App. 339, 338 S.W.2d 237, 238, 243 (1960), and we only set aside a jury verdict if there is no material evidence to support. T.R.A.P. Rule 13(d). In this case, the jury unanimously agreed to the \$130,000.00 verdict which the Trial Judge approved. The appellants’ appraiser testified the property was worth \$224,000.00, and the City’s appraiser

testified the property was worth \$40,950.00. There is no evidence of jury misconduct in this case, and the verdict is within the range of reasonableness.

Accordingly we affirm the judgment of the Trial Court and remand with the cost of appeal assessed to appellant.

Herschel P. Franks, J.

CONCUR:

Don T. McMurray, J.

Charles D. Susano, Jr., J.